

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,
Debtor.

Case No. 7-01-10779-SA
Chapter 7

MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING No. 03-1023 S
(Gonzales v. Roswell H2O, LLC)

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court to approve the settlement of adversary proceeding No. 03-1023 S, captioned *Yvette J. Gonzales, Trustee v. Roswell H2O, LLC, aka Fiesta Waters LLC* (the "Adversary Proceeding"), against the named defendant ("Defendant"), and in support hereof states:

1. Commencement and Conversion of Case. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an order converting the chapter 11 case to a case under chapter 7. On that date the Trustee was appointed as the trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

2. Jurisdiction And Venue. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The Adversary Proceeding. In the Adversary Proceeding, the Trustee seeks to avoid and recover \$21,950.52 from the Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. The Settlement of the Adversary Proceeding. Defendant and the Trustee have agreed to settle the Adversary Proceeding and will stipulate to an order and judgment in Trustee's favor and against Defendant in the amount of \$21,950.52 (the "Preference Judgment"), subject to approval by the Court, after notice. Defendant and the Trustee have agreed that the

Defendant shall satisfy the Preference Judgment by paying the Trustee a total of \$16,462.89 plus interest at the rate of ten percent (10%) per annum, in six (6) equal monthly installments of \$2,824.40 beginning September 15, 2003 and continuing on the fifteenth day of each month until paid in full, in full satisfaction of the Preference Judgment and any and all claims asserted in the Adversary Proceeding (the "Preference Settlement"). Following payment in full of the Preference Settlement with no default, the Trustee will file a satisfaction of the Preference Judgment and the Adversary Proceeding will be dismissed with prejudice. Any payment on the Preference Settlement received before approval by the Court will be held in trust by Trustee's counsel. In the event the Court does not approve the Preference Settlement, payments received on the Preference Settlement will be returned to the Defendant pending further resolution of this Adversary Proceeding.

5. Default. If any of the monthly installments of the Preference Settlement is not received in full and in good funds by the twentieth of the month in which it is due, Defendant will be in default under the terms of the Preference Settlement. In such event, the Preference Judgment, plus interest at the rate of ten percent (10%) per annum from the date of entry of the Preference Judgment, less the total of all payments received on the Preference Settlement, will become due and payable in full, and the Trustee may take any lawful action to enforce and collect the balance of the Preference Judgment. The Bankruptcy Court shall have jurisdiction to enforce the Preference Settlement and the Preference Judgment. Trustee will have no obligation to give notice of default.

6. The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court grant this Motion, approve the Preference Settlement and enter the Preference Judgment in the form attached hereto and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: s/ submitted electronically
Thomas D. Walker
500 Marquette NW, Suite 650
Albuquerque, NM 87102
(505) 766-9272
Attorneys for the Trustee

This certifies that a copy of the
foregoing Motion was served by mail on:

George M. Moore
P.O. Box 159
Albuquerque, NM 87103

Ronald E. Andazola
P.O. Box 608
Albuquerque, New Mexico 87103

Paul Fish
P.O. Box 2168
Albuquerque, NM 87103

Jennie D. Behles
P.O. Box 7070
Albuquerque, NM 87194-7066

This 5th day of September 2003.

s/ submitted electronically
Thomas D. Walker